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No. 813

In the Supreme Court of the United States

OCTOBER TERM, 1960

STATE OF UTAH, VERNON P. BRIDGE, HORACE J. GUNN, AND PANOS J. GEORGOPOULOS, PETITIONERS,

v.

UNITED STATES OF AMERICA, AND THE UNITED STATES CIVIL SERVICE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

WILLIAM H. ORRICK, JR.,
Assistant Attorney General,

MORTON HOLLANDER,
SHERMAN L. COHN,
Attorneys,
Department of Justice,
Washington 25, D. C.

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OPINIONS BELOW

The District Court wrote no opinion. The opinion of the United States Court of Appeals for the Tenth Circuit (Pet. App. 20-29) is reported at 286 F. 2d 30.

JURISDICTION

The judgment of the court of appeals was entered on January 3, 1961. The petition for a writ of certiorari was filed on March 15, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether both courts below correctly held that there was substantial evidence in the record to support the Civil Service Commission's determinations that the individual petitioners violated Section 12(a) of the Hatch Political Activities Act, 5 U.S.C. 118k, and that these violations warranted their removal from their positions with the State of Utah.

STATUTE INVOLVED

The pertinent parts of Section 12 of the Hatch Political Activities Act, as added by Section 4 of the Act of July 19, 1940, 54 Stat. 767, 5 U.S.C. 118k, are set forth in the Appendix, *infra*, pp. 18-22.

STATEMENT

Petitioners seek review of the affirmance by the court of appeals of district court judgments sustaining United States Civil Service Commission determinations that the individual petitioners had violated Section 12 of the Hatch Political Activities Act, and that these violations warranted their removal from employment by the State of Utah.

The statutory scheme. Section 12(a) of the Hatch Act (App., *infra*, p. 18) directs that "[n]o officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency" shall, *inter alia*, "directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay, lend, or contribute any part of his

salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes."

Section 12(b) (App., *infra*, pp. 19-20) provides for investigations by the Civil Service Commission upon complaint, notice to the allegedly offending person and the state by whom he is employed, and a hearing. The Commission is then to "determine whether any violation of [subsection (a)] has occurred and whether such violation, if any, warrants the removal of the officer or employee by whom it was committed from his office or employment," with an eighteen-month ineligibility for reappointment. The Commission notifies both the individual and the state of its determination. If the individual is not removed within thirty days of such notification, or has been reappointed to any position in a state or local agency in that state within eighteen months of removal, the Commission is to "certify to the appropriate Federal agency an order requiring it to withhold from its loans or grants to the State or local agency * * * an amount equal to two years' compensation at the rate such officer or employee was receiving at the time of such violation." Notice of this order is sent to the state or local agency from which such amount is ordered to be withheld.

Section 12(c) (App., *infra*, pp. 21-22) provides that "[a]any party aggrieved by any determination or order" may procure district court review "of such determination or order" by the filing of a petition for review. The court reviews the Commission's determination or order on the administrative record. The Commission's findings of fact are "conclusive" if "sup-

ported by substantial evidence" and its "determination or order" is to be affirmed if it "is in accordance with law."

The pertinent facts. In May 1958, the three individual petitioners were employees of the Utah State Road Commission and the principal employment of each was in connection with activities financed in whole or in part by federal loans or grants (R. 17, 183, 202).[1] At that time, petitioner Gunn was employed as Public Information Officer of the Road Commission (R. 77, 183); petitioner Bridge was Chief of the Commission's Right of Way Design Department (R. 17, 74-75); and petitioner Georgopoulos was Senior Highway Engineer and Acting Assistant Chief of the Right of Way Design Department (R. 76, 202).

In May, 1958, petitioner Gunn, upon the request of the Administrative Assistant to the Governor of Utah, distributed to the heads of the constituent departments of the Road Commission tickets to a Republican Party Fund-Raising Dinner (R. 18, 77, 79-80, 107, 110, 184). Included with the tickets was a copy of a letter signed by C. Taylor Burton, Chairman of the Road Commission (R. 5-6, 18, 79-80, 107, 110, 184), as follows:

> Dear Vern Bridge: As you know, our government is based on a two-party system. Every citizen should participate and support the party of his choice. Only by active participation by all citizens and continued support of the two-party

[1] The pertinent facts were stipulated by the parties before the Civil Service Commission (R. 18, 183-184, 202-203) and were not disputed before the courts below.

system can our form of government be preserved. Administrative leadership changes at the will of the people. At present, it is represented by the Republican Party, in which we all have full confidence.

As you know, it takes money to organize and maintain a party organization, so that it may keep the public informed and carry out the usual election procedures. All should support their party organizations by supporting fund-raising drives or by direct contributions.

On May 21, the State Republican party will hold a fund-raising dinner at the New Utah Motel Auditorium.

All the various departments of the State Government have been requested to help in this drive. The State Road Commission has been asked to contribute its share to this event. In prorating the tickets given to us, we have assigned your department 3 tickets.

May we ask your cooperation and support of this assignment which has been given us.

Will you please handle this prior to noon, Tuesday, May 20th. We shall contact you for a report at that time.

Very truly yours,

C. TAYLOR BURTON,
Chairman, State Road Commission.

Upon receiving this letter and the tickets assigned to his department (R. 18, 75, 76, 110), petitioner Bridge had the Burton letter circulated to the employees of

the Road Commission working under his direction (R. 18, 73, 75, 76, 80, 81, 82, 83, 85, 86, 91, 95, 110). Bridge attached to the Burton letter a message of his own to his subordinates (R. 6, 18, 73, 75, 76, 110, 202), in the following terms:

> Attached is a letter from Mr. Burton.
>
> Since these tickets are $50.00 apiece, the most equitable manner of handling this is for each employee to donate 1.3 per cent of his monthly salary.
>
> Will you all kindly cooperate in order not to throw an additional burden on a few.
>
> Kindly show the amount on the back of this letter you will donate on May 20, along with your name. The tickets can then be raffled off by picking three names of those donating.
>
> V. P. Bridge,
> *Chief, Right-of-Way Designer.*

This circulation of the Burton and Bridge letters resulted in only one employee signing his name and indicating the amount of his contribution as requested (R. 18, 73, 75, 76, 80, 82). Bridge's reaction to this unenthusiastic response was to ask his employees, in his own words, "Is this the way you want it?" (R. 75, 110).

Bridge or Georgopoulos then called a meeting of those subordinates "to discuss the matter of political contributions" (R. 18, 73, 75, 85, 95, 202). While Bridge stood by, Georgopoulos and two others pointed out to the employees that "it was our duty to be loyal to our superiors and inasmuch as contributions had

been requested to the Republican Party we should co-operate" (R. 75, 73, 85, 91, 94, 96, 112).[2] Georgopoulos further pointed out that the Right of Way Design Department "may not receive deserved pay raises if we didn't contribute to the Republican Party" (R. 73, 76, 83, 85, 86, 87, 89, 92, 96, 111, 112-13). The impression was left that failure to contribute could also jeopardize promotions and could even lead to loss of jobs (R. 73, 83, 89, 92). In addition, the appeal for contributions was put on the basis of fairness to the other employees in the department—for each to bear his proportionate share (R. 81, 82, 85).

Finally, in response to a question as to the obligation of those employees who would rather donate to the Democratic Party, Bridge retorted: "What are they doing here then" (R. 92). Bridge "pointed out and emphasized that if you didn't believe in the Republican Party you shouldn't be employed here" (R. 96).

Following the meeting, the letters were circulated a second time (R. 18, 73, 75, 76, 203), and the department's quota of contribution was met (R. 73, 75, 76, 105), though not without bitterness and resentment on the part of the employees (R. 80, 81, 94).

The money collected was turned over to petitioner Gunn and transmitted by him to the Administrative Assistant to the Governor (R. 78, 102, 108, 110, 184). In addition to soliciting contributions from the department chiefs and receiving the moneys collected by them, Gunn "also directly solicited, received, and handled

[2] Georgopoulos deposed that Bridge said to him "that he felt that everybody should contribute; he said that after all they were our bosses and we should help them along" (R. 113).

contributions * * * from employees of the Administrative Office of the Utah State Road Commission and directly urged and advised a 2% contribution of their May 1958 salaries be donated to the Republican Political Party Organization in Utah" (R. 184, 78, 96-97, 103).

Direct soliciting was also done by Clarence J. Allred, Secretary of the Road Commission. Allred asked three employees under his supervision whether they would make a "voluntarily contribution" (R. 98, 99, 117). He collected a total of $5.00 from the three employees (R. 98, 99, 117).

The Civil Service Commission proceedings and orders. The Civil Service Commission, after receipt of complaints concerning the occurrences described above, issued letters of charges against petitioners Bridge, Gunn, Georgopoulos, and the State of Utah, and against C. Taylor Burton, Chairman of the Utah Road Commission, and Clarence J. Allred, Secretary of the Commission, charging violations of Section 12(a) of the Hatch Act. Each party,[3] after answering (R. 15, 21, 28, 192, 210), waived the hearing provided for in Section 12(b) and agreed that the matter should be decided upon the facts contained in stipulations and the exhibits, affidavits, and depositions incorporated in ~~complaints concerning the occurrences described above~~, the stipulations by reference (R. 17-18, 29-30, 183-185, 202-203). In addition to the facts referred to above, the parties expressly stipulated that Bridge, Gunn, Georgopoulos, and Allred "violated the provisions of the

[3] Except for Burton, who moved to dismiss the charges against him on jurisdictional grounds (R. 21-24).

Hatch Political Activities Act of 1939, as amended" (R. 18, 30, 184, 202).

The Civil Service Commission dismissed the charges against Burton, holding that it had no jurisdiction over him, as his "principal employment" was not in connection with activities financed in whole or in part through federal loans or grants (R. 24-26).[4]

On September 10, 1959, the Commission found that it had jurisdiction over Bridge, Gunn, Georgopoulos, and Allred, and that, upon their own admission and the stipulated facts, each of them had violated Section 12(a) of the Hatch Act which provides that such state employees should not "directly or indirectly coerce, attempt to coerce, command, or advise any other * * * officer or employee [covered by the Act] to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes" (App., *infra*, p. 18; R. 31-32).

The Commission then turned to the question of whether the admitted violations warranted the removal of Bridge, Gunn, Georgopoulos, and Allred from employment by the State of Utah. The Commission found that, regardless of their personal intent, Bridge, Gunn, and Georgopoulos played leading roles "in a system of collection of political contributions marked * * * by patently coercive influence" (Pet. App. 53-54, 59, 66-67), and that, in its opinion, such participation warranted their removal from employment by the State of Utah together with ensuing statutory ineligibility

[4] This requirement is a prerequisite to the Commission's jurisdiction under Section 12(a) of the Hatch Act. See App., *infra*, p. 18.

for reemployment for eighteen months (Pet. App. 54, 59, 67).

As for Allred, however, the Commission found that, although he violated the statute by soliciting political contributions from his subordinates, his approach to the employees was free from coercion and in fact he endeavored to remove fear of possible reprisals for failure to contribute (R. 32). Moreover, the Commission found, his "participation was minimal in amount and meager in result" (R. 32). In these circumstances, the Commission decided that it would exercise its "discretion as to imposition of a penalty * * * in favor of Mr. Allred," and concluded that his violation did not warrant removal from state employment (R. 33).

The proceedings and orders in the courts below. Petitioners, acting under Section 12(c) of the Hatch Act (App., *infra*, pp. 21-22), petitioned the district court for review of the Civil Service Commission's orders of September 10, 1959 (R. 2, 180, 199). They did not assert any invalidity in the Commission's determination that the three individual petitioners had violated the prohibitions of the Hatch Act, but alleged only that the Commission's orders constitute "unjust and unreasonable punishment" and as such were "an abuse of discretion" (R. 4, 182, 201).

The district court agreed with the Commission that Bridge, Gunn, and Georgopoulos were subject to the political activity restrictions of Section 12 of the Hatch Act and that they violated those restrictions in that they (Pet. App. 35, 41, 48):

> advised and directly and indirectly coerced other officers or employees subject to the act to pay or

contribute part of their salaries or compensation to the Republican Party organization of Utah for political purposes.

The court also concluded that the determination of the Civil Service Commission that these violations warranted petitioners' removal from office "is supported by substantial evidence and is in accordance with law" (Pet. App. 36, 42, 48). Accordingly, the court affirmed the orders of the Commission (Pet. App. 30, 37, 44).

The court of appeals affirmed (Pet. App. 20-29), holding that the district court was not clearly erroneous in finding that the Commission's determinations were supported by substantial evidence. The court rejected petitioners' contention that the Commission's failure to determine that two other state employees (Burton and Allred) charged with violations should be removed indicated the arbitrary and capricious nature of the rulings that the violations by Bridge, Gunn and Georgopoulos warranted their removal.[5] The opinion concluded that, even if the Commission's failure to determine that the other employees should be removed was error, petitioners should not be heard to complain, for "[i]t would be fallacious to say merely because one violator escapes punishment that [the action against] others, equally guilty, should also be dismissed" (Pet. App. 28).

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[5] The court upheld the Commission's ruling that it had no jurisdiction over one of these employees and that, though the other violated the statute, his participation was so minimal as not to warrant removal.

ARGUMENT

The two courts below applied the correct standard of review of Civil Service Commission determinations laid down in Section 12(c) of the Hatch Act, and the record amply sustains the rulings of the Civil Service Commission and the courts. There is no warrant for further review by this Court.

1. Section 12(c) of the Hatch Act (App., *infra*, pp. 21-22) provides that judicial review of a Civil Service Commission determination or order shall be on the administrative record and "shall extend to questions of fact and questions of law. * * * [F]indings of fact, if supported by substantial evidence, shall be conclusive.[6] The court shall affirm the Commission's determination or order * * * if the court determines that the same is in accordance with law."

This standard of review under Section 12(c) was fully considered in *Oklahoma* v. *United States Civil Service Com'n*, 61 F. Supp. 355 (N.D. Okla.), affirmed, 153 F. 2d 280 (C.A. 10), affirmed, 330 U.S. 127. In that case, Oklahoma sought review of a Civil Service Commission finding that France Paris had violated Section 12(a) and that the violation warranted his removal from the Oklahoma Highway Commission. The Commission's determination was attacked on the ground,

[6] Compare S. 3046, 76th Cong., 3d Sess. (the bill which, as finally enacted, added Section 12 to the Hatch Act), as reported by the House Committee: "[T]he court shall affirm the determination and order of the Commission if, in the opinion of the court, they are supported by the preponderance of the evidence * * *." See H. Rept. No. 2376, 76th Cong., 3d Sess., 3. The standard of review was changed to the substantial-evidence rule on the floor of the House and was accepted by the Senate, 86 Cong. Rec. 2468-76, 9446-48, 9452, 9463, 9495-97.

inter alia, that, as Paris' participation in political activities was passive rather than active, the determination that removal was warranted was too great a punishment. The district court rejected this argument:

> The Court does not agree with the majority of the Civil Service Commission with respect to the punishment inflicted. The order, requiring the State of Oklahoma to remove Paris or the withholding of federal funds, by the majority of the Commission appears to be unduly harsh. But *the violation having been established, the penalty to be invoked was within the discretion of the Commission.* This Court is without power to substitute its judgment for that of the Commission.[7]

The court of appeals and this Court affirmed. In so doing, this Court stated that consideration as to whether removal was warranted

> is limited to an examination into whether or not the Commission abused its discretion * * * *The question of "the removal of an officer or employee,"*

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[7] 61 F. Supp. at 357. Emphasis added. The standard of review authorized by Section 12(c) was also considered in *Stewart* v. *United States Civil Service Commission*, 45 F. Supp. 697, 702 (N.D. Ga.). The court, in applying the same standard as in the *Oklahoma* case, stated: "Where an administrative agency has been set up to whose informed judgment and discretion Congress has committed the determination of questions of fact, on the basis of which it is authorized to make administrative orders, 'such determinations will not be set aside by courts if there is evidence to support them. Even though, upon a consideration of all the evidence, a court might reach a different conclusion, it is not authorized to substitute its own for the administrative judgment.' Swayne & Holt, Ltd. v. United States, 300 U.S. 297, 304. * * * Rochester Tel Corp. v. United States, 307 U.S. 125, 145, 146 * * *."

** * * we think is a matter of administrative discretion.*[8]

It is therefore clear that, if the determinations of the Commission that the present petitioners violated Section 12 are supported by substantial evidence, the Commission had discretion to determine whether removal was proper. Unless petitioners can show an abuse of that discretion, the district court and the court below correctly affirmed the Commission's rulings.

2 (*a*). With respect to the violations, the facts are plain (see the Statement, *supra*, pp. 4-8); indeed, the individual petitioners admitted before the Commission that they had violated Section 12(a) (R. 18, 184, 202). The petition does not challenge the Commission's findings on this score.

(b). In these circumstances, the determination as to whether removal is warranted lay, as we have pointed out, in the "administrative discretion" of the Civil Service Commission. *Oklahoma* v. *United States Civil Service Com'n*, *supra*, 330 U.S. at 146. There can be no serious question that this discretion was properly exercised.

Petitioner Gunn, Public Information Officer of the Utah State Road Commission, distributed tickets for a political dinner to the heads of the departments that made up the Road Commission (R. 18, 77, 79-80, 107, 110, 184). Along with these tickets he included a letter from the Chairman of the Road Commission which advised that "we have *assigned* your department

[8] 330 U.S. at 145-46. Emphasis added.

3 tickets" and requested the department heads to furnish "cooperation and support of this assignment which has been given us" (R. 5-6, 18, 79-80, 107, 110, 184, emphasis added). In addition, Gunn "directly solicited, received, and handled contributions" from the employees in the Road Commission's Administrative Office, in the course of which he "directly urged and advised a 2% contribution of their May 1958 salaries be donated to the Republican Political Party Organization in Utah" (R. 184, 78, 96-97, 103).

Petitioner Bridge, Chief of the Commission's Right of Way Design Department, circulated to his subordinates the Chairman's solicitation letter (R. 18, 73, 75, 80-83, 85-86, 91, 95, 110). He also circulated to his subordinates his own letter of solicitation, in which he requested each subordinate "to donate 1.3 percent of his monthly salary" (R. 6, 18, 73, 75, 76, 110, 202). He requested that each subordinate sign his name to the back of the letter indicating the amount of his donation (R. 6).

Since this procedure was not effective (R. 18, 73, 75, 76, 80, 82), a meeting was called of the recalcitrant employees (R. 18, 73, 75, 85, 95, 202). In Bridge's presence, his subordinates were exhorted by petitioner Georgopoulos (Acting Assistant Chief of the Section) and two others to fulfill their duty of loyalty to their superiors by contributing to the Republican Party (R. 73, 75, 85, 91, 94, 96, 112), and to bear their fair share of the burden so that their fellow workers would not need to contribute more than was necessary (R. 81, 82, 85). Finally, it was pointed out that, if the Right

of Way Design Department did not contribute to the Republican Party, its members "may not receive deserved pay raises," and promotions, and perhaps even their jobs, might be in jeopardy (R. 76, 73, 83, 85-87, 89, 92, 94, 96). As far as the record shows, Bridge stood by as his subordinates were thus exhorted and threatened until he was directly asked about those of his subordinates who would rather donate to the Democratic Party. His answer was "What are they doing here then" (R. 92), and he "pointed out and emphasized that if you didn't believe in the Republican Party you shouldn't be employed here" (R. 96). Following this meeting, Bridge had the letters recirculated. (R. 18, 73, 75, 76, 203). This time the department's quota of political contributions was met (R. 73, 75, 76, 105).[9]

On this record, there is plainly no support for petitioners' insistence (Pet. 10-11) that the Commission erred in finding the acts of the individual petitioners to have been coercive, and no basis for upsetting the Commission's decision that they should be removed.[10]

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[9] The record makes it absolutely clear that the employees subordinate to petitioners Bridge and Georgopoulos made their contributions involuntarily and with resentment. See the testimony of Benjamin Greenwald, Ednalene Foreman, Walter B. Lillian, James Stacey, among others; R. 74, 80-94.

[10] Petitioners suggest in passing (Pet. 6) that Section 12(a) was intended to proscribe activity only in connection with federal elections. There is no warrant for such a restrictive interpretation either in the statutory language or its legislative history. The legislative history cited by petitioners (S. Doc. No. 105, 76th Cong., 1st Sess.) is a presidential message in connection with the original Hatch Act of 1939 and not the Act of July 19, 1940, 54 Stat. 767, which imposed the restrictions on state employees that form the subject of the present case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

WILLIAM H. ORRICK, JR.,
Assistant Attorney General.

MORTON HOLLANDER,
SHERMAN L. COHN,
Attorneys.

APRIL, 1961.

APPENDIX

Section 12 of the Hatch Political Activities Act, as added by Section 4 of the Act of July 19, 1940, 54 Stat. 767, 5 U.S.C. 118k, provides in pertinent part:

(a) *Influencing elections; officer or employee defined.*

No officer or employee of any State or local agency whose principal employment is in connection with any activity which is financed in whole or in part by loans or grants made by the United States or by any Federal agency shall (1) use his official authority or influence for the purpose of interfering with an election or a nomination for office, or affecting the result thereof, or (2) directly or indirectly coerce, attempt to coerce, command, or advise any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes. No such officer or employee shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of the second sentence of this subsection, the term "officer or employee" shall not be construed to include (1) the Governor or the Lieutenant Governor of any State or any person who is authorized by law to act as governor, or the mayor of any city; (2) duly elected heads of executive departments of any State or municipality who are not classified under a State or municipal merit or civil-service system; (3) officers holding elective offices.

(b) *Investigations by Civil Service Commission; removal of employees; withholding grants from States.*

If any Federal agency charged with the duty of making any loan or grant of funds of the United States for use in any activity by any officer or employee to whom the provisions of subsection (a) of this section are applicable has reason to believe that any such officer or employee has violated the provisions of such subsection, it shall make a report with respect thereto to the United States Civil Service Commission (hereinafter referred to as the "Commission"). Upon the receipt of any such report, or upon the receipt of any other information which seems to the Commission to warrant an investigation, the Commission shall fix a time and place for a hearing, and shall by registered mail send to the officer or employee charged with the violation and to the State or local agency employing such officer or employee a notice setting forth a summary of the alleged violation and the time and place of such hearing. At such hearing (which shall be not earlier than ten days after the mailing of such notice) either the officer or employee or the State or local agency, or both, may appear with counsel and be heard. After such hearing, the Commission shall determine whether any violation of such subsection has occurred and whether such violation, if any, warrants the removal of the officer or employee by whom it was committed from his office or employment, and shall by registered mail notify such officer or employee and the appropriate State or local agency of such determination. If in any case the Commission finds that such officer or employee has not been removed from his

office or employment within thirty days after notice of a determination by the Commission that such violation warrants his removal, or that he has been so removed and has subsequently (within a period of eighteen months) been appointed to any office or employment in any State or local agency in such State, the Commission shall make and certify to the appropriate Federal agency an order requiring it to withhold from its loans or grants to the State or local agency to which such notification was given an amount equal to two years' compensation at the rate such officer or employee was receiving at the time of such violation; except that in any case of such a subsequent appointment to a position in another State or local agency which receives loans or grants from any Federal agency, such order shall require the withholding of such amount from such other State or local agency: *Provided*, That in no event shall the Commission require any amount to be withheld from any loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of such amount would jeopardize the payment of the principal or interest on such bonds or notes. Notice of any such order shall be sent by registered mail to the State or local agency from which such amount is ordered to be withheld. The Federal agency to which such order is certified shall, after such order becomes final, withhold such amount in accordance with the terms of such order. Except as provided in subsection (*c*) of this section, any determination or order of the Commission shall become final upon the expiration of thirty days after the mailing of notice of such determination or order.

(c) Court review of determination of Commission.

Any party aggrieved by any determination or order of the Commission under subsection (b) of this section may, within thirty days after the mailing of notice of such determination or order, institute proceedings for the review thereof by filing a written petition in the district court of the United States for the district in which such officer or employee resides; but the commencement of such proceedings shall not operate as a stay of such determination or order unless (1) it is specifically so ordered by the court, and (2) such officer or employee is suspended from his office or employment during the pendency of such proceedings. A copy of such petition shall forthwith be served upon the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the determination or the order complained of was made. The review by the court shall be on the record entire, including all of the evidence taken on the hearing, and shall extend to questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may direct such additional evidence to be taken before the Commission in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings of fact or its determination or order by reason of the additional evidence so taken and shall file with

the court such modified findings, determination, or order, and any such modified findings of fact, if supported by substantial evidence, shall be conclusive. The court shall affirm the Commission's determination or order, or its modified determination or order, if the court determines that the same is in accordance with law. If the court determines that any such determination or order, or modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Commission with directions either to make such determination or order as the court shall determine to be in accordance with law or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court shall be final, subject to review by the appropriate court of appeals as in other cases, and the judgment and decree of such court of appeals shall be final, subject to review by the Supreme Court of the United States on certiorari or certification as provided in sections 346 and 347 of Title 28. If any provision of this subsection is held to be invalid as applied to any party with respect to any determination or order of the Commission, such determination or order shall thereupon become final and effective as to such party in the same manner as if such provision had not been enacted.

* * * * *

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